

Eliminating Occupation Taxes

The Local Tax Enabling Act, Act 511 of 1965,¹ provides a mechanism by which school districts and municipal corporations can abolish their occupational assessment tax or flat rate occupation tax and replace lost revenues with an earned income tax levied at a rate above the current limits otherwise prescribed by the act.² The authorization to eliminate occupational assessment taxes in exchange for an optional levy was previously contained in the Optional Occupation Tax Elimination Act (Act 24 of 2001).³ Act 24 was subsequently amended into Act 511 by Act 130 of 2008.⁴ The former provisions of Act 24, as amended, are now contained in Chapter 4 of Act 511, “Optional Occupation Tax Elimination.”

Proceedings under Act 511 to abolish the occupational assessment tax are begun solely at the discretion of the governing body of the school district or municipality.⁵ Action cannot be initiated by the voters; however, after the governing body chooses to start the process, actual elimination of the occupation tax is dependent on voter approval through a referendum.⁶

Procedure

Act 511 specifies the manner in which to determine the total amount of earned income tax and the new earned income tax rate that will be needed if the occupational assessment tax or the flat rate occupation tax is replaced.⁷

- (1) In the case of a school district that opted to eliminate the occupational assessment tax prior to the fiscal year (FY) ending in 2007, the new earned income tax rate would be the sum of the following two rates:
 - (i) The rate of an earned income tax that would be needed to generate an additional amount of earned income tax equal to the amount collected from the occupational assessment tax or occupation tax for the fiscal year (FY) ending in 2002, using actual revenue collections.

¹ 53 P.S. § 6924.101 et seq.

² See Act 511, Chapter 4, “Optional Occupation Tax Elimination” (53 Pa.C.S. §§ 6924.401-6924.409).

³ Act 50 of 1998 (53 Pa.C.S. §§ 8401, 8581-8588, in relevant part), gave school districts the authority, either on their own initiative or through voter mandate, to explore a revision of its system of taxation. A subsequent referendum could then propose the imposition of a higher earned income tax rate along with the repeal of various other local taxes and possibly homestead and farmstead property tax relief. Act 72 of 2004, the Homeowner Tax Relief Act (53 P.S. § 6925.101 et seq.), repealed Act 50, thereby eliminating the ability of school districts to utilize its provisions after September 3, 2004.

⁴ Act 130 of 2008 repealed Act 24 of 2001.

⁵ Act 511, § 406.

⁶ *Id.* at § 407.

⁷ *Id.* at § 404.

- (ii) The rate of the earned income tax collected by the school district for FY 2001-2002 under the Act.⁸

A school district that levied an occupation tax for the fiscal year ending in 2009 and opted to eliminate the occupational assessment tax thereafter would use the same procedure as above, but the calculation of the maximum income tax rate would be based on the revenue data and rate for the fiscal year ending in 2009.⁹

- (1) In the case of a municipality which opted to eliminate the occupational assessment tax prior to 2007, the new earned income tax rate would be derived by adding the following:
 - (i) The additional rate increase for earned income tax that would be needed to generate an additional amount of earned income tax equal to the amount received from the occupational assessment tax or occupation tax collected by a municipality for the calendar year ending December 31, 2001, using actual revenue collections.
 - (ii) The rate for the earned income tax collected by the municipality for FY 2001 under Act 511.¹⁰

A municipality which that levied an occupation tax for the calendar year ending December 31, 2008 and opted to eliminate the occupational assessment tax thereafter would use the same procedure as above, but the calculation of the maximum income tax rate would be based on the revenue data and rate for the calendar year ending December 31, 2008.

Generally, if the earned income tax is imposed only under Act 511, Section 311(12) of the act provides that, in cases in which a taxpayer is subject to an earned income tax imposed both by a school district and a municipality, the rate of earned income tax that each taxing district can collect will be limited, either by operation of law or by agreement, so that the total earned income tax burden on the taxpayer does not exceed one (1 percent) percent. If either the school district or the municipality opts to utilize the provisions of Chapter 4 of Act 511, the other taxing district will remain subject to the limits on its earned income tax that were previously established, either by operation of law or by agreement.¹¹

The Taxpayer Relief Act, or Act 1, Special Session 1, of 2006 (hereinafter referred to as Act 1) replaced the General Assembly's prior effort to provide property tax relief, the Homeowner Tax Relief Act (Act 72 of 2004). Like Act 72, Act 1 provides authorization for a school district, through voter approval, to increase its earned income tax rate or convert its earned income tax to a personal

⁸ Act 511, § 404(b).

⁹ *Id.* at § 404(b.1).

¹⁰ *Id.* at § 404(b).

¹¹ Taxpayer Relief Act, Act 1, Special Session 1, of 2006 (53 P.S. § 6926.101 et seq.) § 304.

income tax in order to provide property tax relief to school district residents through homestead and farmstead property tax exclusions.¹² Act 1 provides that any attempts to increase earned income tax rates pursuant its provisions shall not preclude a school district from utilizing (Act 511) to eliminate occupation taxes, even if both referenda questions occur during the same election. If, however, voter approval is sought to convert an earned income tax to a personal income tax under Act 1, an Act 511, Chapter 4, question may not occur during the same election.¹³

Although the municipal governing body initiates the process to eliminate the specific occupation tax, final implementation is contingent upon voter approval in a referendum to be held at the general or municipal election preceding the fiscal year when the maximum rate of the earned income tax will possibly be increased. The county board of elections is required to place the question on the ballot at the first municipal or general election occurring at least 90 days after receipt of the resolution approved by the governing body of the school district or municipality.¹⁴ If the voters approve the ballot question, the additional earned income tax will be collected the first fiscal year after the successful referendum, and the occupational assessment tax or flat rate occupation tax will be abolished.¹⁵ Under Section 405 of Act 511, once the occupation tax is eliminated, it cannot be levied during subsequent fiscal years. However, the taxing districts may continue to collect delinquent occupation taxes without regard to this restriction.

County assessment offices are not required to maintain occupational assessment rolls if all taxing districts within the county have abolished the tax.

Example: School district “A” raised \$500,000 from the occupational assessment tax during FY 2001-2002, which ended on June 30, 2002. The business administrator for the district has calculated that this amount would be equivalent to a 0.3 percent earned income tax levy. During FY 2001-2002, the school district collected the maximum permissible earned income tax under Act 511 at 0.5 percent since its coterminous municipality also levied the tax at a rate of 0.5 percent. In most cases, the maximum rate permitted by Act 511 is 1 percent. This tax is subject to sharing by the school district and municipality. Therefore, the maximum rate at which a school district could levy its earned income tax would be 0.8 percent. However, in this example, the amount of earned income tax that would be actually paid by an individual taxpayer would be 1.3 percent since the municipality would still be collecting its 0.5 percent.

¹² See *Deskbook* article, “Taxpayer Relief Act,” for a more detailed discussion of Act 1.

¹³ Act 1, § 303.

¹⁴ *Id.* § 407.

¹⁵ *Id.* §§ 404-405.